

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0464-PWS-E TCEQ ID: RN101388536 CASE NO.: 35574
RESPONDENT NAME: City of Newark

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Newark, 310 Farm-to-Market Road 718, Newark, Wise County</p> <p>TYPE OF OPERATION: Municipal public water system</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: No complaints were received. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on August 4, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768 TCEQ Enforcement Coordinator: Mr. Epifanio Villarreal, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4033; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: The Honorable H. B. Malone, Mayor, City of Newark, P.O. Box 156, Newark, Texas 76071 Respondent's Attorney: Mr. Douglas W. Black of the law firm of Taylor, Olson, Adkins, Scralla, & Elam, L.L.P., 6000 Western Place, Suite 200, Fort Worth, Texas 76107-4654</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 28, 2008</p> <p>Date of NOV/NOE Relating to this Case: March 13, 2008 (NOB)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to issue a boil water notification within 24 hours using the prescribed notification format as specified in 30 TEX. ADMIN. CODE § 290.47(e) [30 TEX. ADMIN. CODE § 290.46(q)(1)].</p> <p>2) Failure to monitor the disinfectant residual at representative locations throughout the distribution system at least once per day [30 TEX. ADMIN. CODE § 290.110(c)(4)(B)].</p>	<p>Total Assessed: \$1,130</p> <p>Total Deferred: \$226 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$904</p> <p>Total Paid (Due) to General Revenue: \$0</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Within 10 days after the effective date of this Agreed Order, begin monitoring and recording the disinfectant residual at representative locations in the distribution system at least once per day;</p> <p>b. Within 30 days after the effective date of this Agreed Order, develop and begin maintaining a written protocol that is to be followed to ensure that proper public notification and boil water notices are provided to the customers of the water system in the event of distribution pressures below 20 pounds per square inch, water outages, positive microbiological samples, low chlorine residuals, or other conditions which indicate that potability of the water may be compromised; and</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions 2.a and 2.b.</p>

Additional ID No(s): PWS 2490008

Attachment A
Docket Number: 2008-0464-PWS-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Newark
Payable Penalty Amount:	Nine Hundred Four Dollars (\$904)
SEP Amount:	Nine Hundred Four Dollars (\$904)
Type of SEP:	Pre-approved
Third-Party Recipient:	Keep Texas Beautiful
Location of SEP:	Cooke County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to cleanup rivers, lakes, and shorelines, by supplying project coordination, labor, supplies, and materials for cleanup events and by providing assistance with disposal fees for proper disposal of wastes collected at events. To maximize the event, cleanups will use volunteers for labor. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by improving water quality of lakes, rivers, and creeks, reducing flooding caused by blockage of drainage outlets, reducing the potential threat to wildlife, decreasing damage to boats, and reducing injury to swimmers and bathers.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Hester Bloom, Program Manager
Keep Texas Beautiful
P.O. Box 2251
Austin, Texas 78768

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

TCEQ

DATES	Assigned	17-Mar-2008	Screening	19-Mar-2008	EPA Due	
	PCW	19-Mar-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Newark		
Reg. Ent. Ref. No.	RN101388536		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	35574	No. of Violations	2
Docket No.	2008-0464-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Enf. Coordinator	Epifanio Villarreal
Multi-Media		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

The penalty enhancement is due to one prior enforcement order containing a denial of liability.

Culpability

 Enhancement

Subtotal 4

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply
 Reduction

Subtotal 5

Before NOV

NOV to EDP RP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent does not meet the good faith criteria.

 Enhancement*

Subtotal 6

 Total EB Amounts
 Approx. Cost of Compliance

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Enhancement recommended for recovery of avoided costs of compliance.

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

DEFERRAL

Reduction

Adjustment

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

Screening Date 19-Mar-2008

Docket No. 2008-0464-PWS-E

PCW

Respondent City of Newark

Policy Revision 2 (September 2002)

Case ID No. 35574

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN101388536

Media [Statute] Public Water Supply

Enf. Coordinator Epifanio Villarreal

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 20%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

The penalty enhancement is due to one prior enforcement order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 20%

Screening Date 19-Mar-2008 Respondent City of Newark Case ID No. 35574 Reg. Ent. Reference No. RN101388536 Media [Statute] Public Water Supply Enf. Coordinator Epifanio Villarreal Violation Number <input type="text" value="1"/> Rule Cite(s) <div style="border: 1px solid black; padding: 5px; text-align: center;">30 Tex. Admin. Code § 290.46(q)(1)</div> Violation Description <div style="border: 1px solid black; padding: 5px;">Failed to issue a boil water notification within 24 hours using the prescribed notification format as specified in 30 Tex. Admin. Code § 290.47(e). Specifically, at the time of the investigation, it was documented that the Respondent did not issue boil water notices within 24 hours after pressures in sections of the distribution system dropped below 20 pounds per square inch ("psi") after two main breaks that occurred in the lines on September 26 and October 16, 2007.</div>	Docket No. 2008-0464-PWS-E <div style="text-align: right;">PCW <small>Policy Revision 2 (September 2002) PCW Revision February 29, 2008</small></div>																			
Base Penalty <input style="width: 100px;" type="text" value="\$1,000"/>																				
>> Environmental, Property and Human Health Matrix																				
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td colspan="3" style="text-align: center;">Harm</td> <td></td> </tr> <tr> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td style="text-align: center;">Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="vertical-align: middle;">Percent <input style="width: 50px;" type="text" value="25%"/></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td style="text-align: center;">x</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>		Harm				Release	Major	Moderate	Minor		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input style="width: 50px;" type="text" value="25%"/>	Potential	x	<input type="text"/>	<input type="text"/>
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>> Programmatic Matrix																				
Matrix Notes	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td style="text-align: center;">Falsification</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="vertical-align: middle;">Percent <input style="width: 50px;" type="text" value="0%"/></td> </tr> <tr> <td></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> Failure to issue a boil water notice may not allow the public to take appropriate measures in response to the low water pressure which could result in the delivery of contaminated water that could exceed levels that are protective of human health. </div>		Major	Moderate	Minor		Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input style="width: 50px;" type="text" value="0%"/>		<input type="text"/>	<input type="text"/>	<input type="text"/>					
	Major	Moderate	Minor																	
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Adjustment <input style="width: 100px;" type="text" value="\$750"/>																				
<input style="width: 100px;" type="text" value="\$250"/>																				
Violation Events																				
<table style="width: 100%;"> <tr> <td style="width: 40%;">Number of Violation Events <input style="width: 50px;" type="text" value="2"/></td> <td style="width: 20%; text-align: center;"><input style="width: 50px;" type="text" value="2"/></td> <td style="width: 40%;">Number of violation days</td> </tr> </table>		Number of Violation Events <input style="width: 50px;" type="text" value="2"/>	<input style="width: 50px;" type="text" value="2"/>	Number of violation days																
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<div style="display: flex; align-items: center;"> <div style="margin-right: 10px;"> <small>mark only one with an x</small> </div> <table border="1" style="border-collapse: collapse;"> <tr><td style="padding: 2px 5px;">daily</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px 5px;">monthly</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px 5px;">quarterly</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px 5px;">semiannual</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px 5px;">annual</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px 5px;">single event</td><td style="text-align: center;">x</td></tr> </table> </div>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	x	Violation Base Penalty <input style="width: 100px;" type="text" value="\$500"/>							
daily	<input type="text"/>																			
monthly	<input type="text"/>																			
quarterly	<input type="text"/>																			
semiannual	<input type="text"/>																			
annual	<input type="text"/>																			
single event	x																			
Two single events are recommended (one event for each main break).																				
Economic Benefit (EB) for this violation																				
<table style="width: 100%;"> <tr> <td style="width: 50%;">Estimated EB Amount <input style="width: 100px;" type="text" value="\$200"/></td> <td style="width: 50%;">Statutory Limit Test</td> </tr> </table>		Estimated EB Amount <input style="width: 100px;" type="text" value="\$200"/>	Statutory Limit Test																	
Estimated EB Amount <input style="width: 100px;" type="text" value="\$200"/>	Statutory Limit Test																			
<table style="width: 100%;"> <tr> <td style="width: 50%;">Violation Final Penalty Total <input style="width: 100px;" type="text" value="\$753"/></td> <td style="width: 50%;"></td> </tr> </table>		Violation Final Penalty Total <input style="width: 100px;" type="text" value="\$753"/>																		
Violation Final Penalty Total <input style="width: 100px;" type="text" value="\$753"/>																				
This violation Final Assessed Penalty (adjusted for limits) <input style="width: 100px;" type="text" value="\$753"/>																				

Economic Benefit Worksheet**Respondent** City of Newark**Case ID No.** 35574**Reg. Ent. Reference No.** RN101388536**Media** Public Water Supply**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	26-Sep-2007	27-Sep-2007	0.0	\$0	\$100	\$100
Other (as needed)	\$100	16-Oct-2007	17-Oct-2007	0.0	\$0	\$100	\$100

Notes for AVOIDED costs

The avoided cost includes the amount necessary to provide boil water notices, calculated for the 24 hour occurrence.

Approx. Cost of Compliance \$200**TOTAL** \$200

Screening Date 19-Mar-2008		Docket No. 2008-0464-PWS-E		PCW	
Respondent City of Newark		<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 35574		<small>PCW Revision February 29, 2008</small>			
Reg. Ent. Reference No. RN101388536					
Media [Statute] Public Water Supply					
Enf. Coordinator Epifanio Villarreal					
Violation Number <input type="text" value="2"/>					
Rule Cite(s)		<input type="text" value="30 Tex. Admin. Code § 290.110(c)(4)(B)"/>			
Violation Description		<input type="text" value="Failed to monitor the disinfectant residual at representative locations throughout the distribution system at least once per day. Specifically, at the time of the investigation, it was documented that the disinfectant residual was being monitored and recorded weekly (every 5 days)."/>			
		Base Penalty		<input type="text" value="\$1,000"/>	

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>

>> Programmatic Matrix

Falsification				
Major	Moderate	Minor		
<input type="text"/>	<input type="text"/>	<input type="text"/>		
				Percent <input type="text" value="0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events <input type="text" value="1"/>		<input type="text" value="20"/> Number of violation days	
<small>mark only one with an x</small>	daily	<input type="text"/>	
	monthly	<input type="text" value="x"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
Violation Base Penalty <input type="text" value="\$250"/>			

Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	<input type="text" value="\$30"/>	Violation Final Penalty Total	<input type="text" value="\$377"/>
		This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$377"/>

Economic Benefit Worksheet

Respondent City of Newark
Case ID No. 35574
Reg. Ent. Reference No. RN101388536
Media Public Water Supply
Violation No. 2

Percent Interest 5.0
Years of Depreciation 15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment			0.0	\$0	\$0	\$0
Buildings			0.0	\$0	\$0	\$0
Other (as needed)			0.0	\$0	\$0	\$0
Engineering/construction			0.0	\$0	\$0	\$0
Land			0.0	\$0	n/a	\$0
Record Keeping System			0.0	\$0	n/a	\$0
Training/Sampling			0.0	\$0	n/a	\$0
Remediation/Disposal			0.0	\$0	n/a	\$0
Permit Costs			0.0	\$0	n/a	\$0
Other (as needed)			0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal			0.0	\$0	\$0	\$0
Personnel			0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.0	\$0	\$0	\$0
Supplies/equipment			0.0	\$0	\$0	\$0
Financial Assurance [2]			0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0.0	\$0	\$0	\$0
Other (as needed)	\$30	28-Feb-2008	19-Mar-2008	0.0	\$0	\$30

Notes for AVOIDED costs

The avoided costs include the amount to perform daily monitoring of the disinfectant residual in the system (\$10 per week), calculated from the date of the investigation to the screening date.

Approx. Cost of Compliance

\$30

TOTAL

\$30

Compliance History

Customer/Respondent/Owner-Operator:	CN600342091	City of Newark	Classification: AVERAGE	Rating: 3.31
Regulated Entity:	RN101388536	CITY OF NEWARK	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY WATER LICENSING	REGISTRATION LICENSE	2490008	2490008
Location:	310 FM 718, NEWARK, TX, 76071			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	March 19, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 19, 2003 to March 19, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Epi Villarreal	Phone:	(210) 403-4033	

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 05/12/2006 ADMINORDER 2005-0488-PWS-E
Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(3)(D)
Description: Failure to provide facilities to determine the amount of disinfectant remaining for use.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(d)(2)(A)
5A THC Chapter 341, SubChapter A 341.0315(c)

Description: Failure to maintain a minimum free chlorine residual of 0.2 mg/L throughout the distribution system at all times.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(i)
Description: Failure to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to insure that neither cross-connections nor other unacceptable plumbing practices are permitted.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(E)(iv)
Description: Failure to maintain copies of the Customer Service Inspection reports.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(B)
Description: Failure to provide a well casing that extends a minimum of 18 inches above the elevation of the finished floor of the pump room or natural ground surface and a minimum of one inch above the sealing block or pump motor foundation.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)
30 TAC Chapter 290, SubChapter F 290.111(e)

Description: Failure to maintain adequate monthly operating reports.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.42(l)

Description: Failure to compile and keep up-to-date a thorough plant operations manual for operator review and reference.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)

Description: Failure to maintain an up-to-date chemical and microbiological monitoring plan.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(n)(3)

Description: Failure to maintain on file at the public water system and be available to the executive director upon request a copy of the well completion data.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)(B)

Description: Failure to annually inspect all pressure tanks.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)

Description: Failure to initiate a maintenance program to ensure that the system's facilities and equipment are in good working condition.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(D)(i)
5A THC Chapter 341, SubChapter A 341.0315(c)

Description: Failure to provide the minimum well capacity of 0.6 gallons per minute per connection.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(u)

Description: Failure to submit test results for showing that an abandoned well is in a non-deteriorated condition.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.45(f)(1)

Description: Failure to provide a copy of the water purchase contract to the executive director.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(iii)

Description: Failure to maintain records of the date, location, and nature of water quality, pressure, or outage complaints received by the system and the results of any subsequent complaint investigation.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(e)

Description: Failure to ensure that all potable water storage tanks and pressure maintenance facilities are enclosed by an intruder-resistant fence with lockable gates.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 02/10/2005 (341215)

2 04/01/2007 (539950)

3 01/04/2008 (612473)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF NEWARK
RN101388536**

**§ BEFORE THE
§ TEXAS COMMISSION ON
§ ENVIRONMENTAL QUALITY
§**

AGREED ORDER DOCKET NO. 2008-0464-PWS-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Newark ("the City") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the City represented by Mr. Douglas W. Black of the law firm of Taylor, Olson, Adkins, Scralla, & Elam, L.L.P. appear before the Commission and together stipulate that:

1. The City owns and operates a municipal public water system at 310 Farm-to-Market Road 718 in Newark, Wise County, Texas (the "Facility") that has approximately 371 service connections and serves at least 25 people per day for at least 60 days per year.
2. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
3. The City received notice of the violations alleged in Section II ("Allegations") on or about March 18, 2008.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of One Thousand One Hundred Thirty Dollars (\$1,130) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Nine Hundred Four Dollars (\$904) shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP") and Two Hundred Twenty-Six Dollars (\$226) is deferred contingent upon the City's timely and satisfactory compliance with all

- the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty.
6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
 7. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
 8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
 9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
 10. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the City is alleged to have:

1. Failed to issue a boil water notification within 24 hours using the prescribed notification format as specified in 30 TEX. ADMIN. CODE § 290.47(e), in violation of 30 TEX. ADMIN. CODE § 290.46(q)(1), as documented during an investigation conducted on February 28, 2008.
2. Failed to monitor the disinfectant residual at representative locations throughout the distribution system at least once per day, in violation of 30 TEX. ADMIN. CODE § 290.110(c)(4)(B), as documented during an investigation conducted on February 28, 2008.

III. DENIALS

The City generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Newark, Docket No. 2008-0464-PWS-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The City shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 5 above, Nine Hundred Four Dollars (\$904) of the assessed administrative penalty shall be offset with the condition that the City implement the SEP defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the City shall undertake the following technical requirements:
 - a. Within 10 days after the effective date of this Agreed Order, begin monitoring and recording the disinfectant residual at representative locations in the distribution system at least once per day, in accordance with 30 TEX. ADMIN. CODE § 290.110;
 - b. Within 30 days after the effective date of this Agreed Order, develop and begin maintaining a written protocol that is to be followed to ensure that proper public notification and boil water notices are provided to the customers of the water system in the event of distribution pressures below 20 pounds per square inch, water outages, positive microbiological samples, low chlorine residuals, or other conditions which indicate that potability of the water may be compromised, in accordance with 30 TEX. ADMIN. CODE § 290.46; and
 - c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions 3.a and 3.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

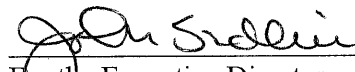
4. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

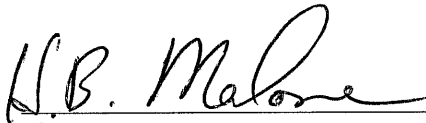
7/23/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

5-15-08
Date

H. B. Malone

Name (Printed or typed)
Authorized Representative of
City of Newark

Mayor

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

Attachment A
Docket Number: 2008-0464-PWS-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Newark
Payable Penalty Amount:	Nine Hundred Four Dollars (\$904)
SEP Amount:	Nine Hundred Four Dollars (\$904)
Type of SEP:	Pre-approved
Third-Party Recipient:	Keep Texas Beautiful
Location of SEP:	Cooke County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to cleanup rivers, lakes, and shorelines, by supplying project coordination, labor, supplies, and materials for cleanup events and by providing assistance with disposal fees for proper disposal of wastes collected at events. To maximize the event, cleanups will use volunteers for labor. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by improving water quality of lakes, rivers, and creeks, reducing flooding caused by blockage of drainage outlets, reducing the potential threat to wildlife, decreasing damage to boats, and reducing injury to swimmers and bathers.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Hester Bloom, Program Manager
Keep Texas Beautiful
P.O. Box 2251
Austin, Texas 78768

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

